89-104

No. _____

_____

Supreme Court, U.S.
FILED
JUN 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

1988-89 Term

_____

RANDALL B. WOODFIELD,

Petitioner,

v.

ANN RULE (aka "Andy Stack"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

_____

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

_____

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June 21, 1989

QUESTIONS PRESENTED

1. Whether an inmate excluded from the protection of Oregon's disability statute, which tolls the statute of limitations for commencing civil actions to those inmates who are serving time for a misdemeanor or serving a sentence for a term of less than life, is denied his right to equal protection under the Fourteenth Amendment of the United States Constitution and Privileges and Immunities Clause of the Oregon Constitution simply because he is serving a life term.

2. Whether the Oregon legislature could have reasonably, rationally or arguably conceived that excluding from the benefits of the tolling statute convicts serving life sentences serves important state interests.

LIST OF PARTIES

The parties to the proceedings below were petitioner Randall B. Woodfield and the respondents Ann Rule, aka "Andy Stack" and the New American Library, Inc.

The respondents before this court are Ann Rule, aka "Andy Stack" and the New American Library, Inc.

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IN THE SUPREME COURT OF THE UNITED STATES

1988-89 Term

RANDALL B. WOODFIELD,

Petitioner,

v.

ANN RULE (aka "Andy Stack"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The petitioner Randall B. Woodfield respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled proceeding on March 23, 1989.

OPINIONS BELOW

The opinion of the Court of Appeals for the Nintn Circuit is not published, but it is reprinted in tne appendix hereto, p.

10a, infra.

The order and opinion of the United States District Court for the District of Oregon (Panner, D.J.) has not been reported. It is reprinted in the appendix hereto, p. 5a, infra.

The findings and recommendation and order of Magistrate Michael R. Hogan of the United States District Court for the District of Oregon have not been reported. It is reprinted in the appendix hereto, p. 1a, infra.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. § 1332, the petitioner brought this suit in the United States District Court for the District of Oregon. On January 13, 1988, the District of Oregon adopted the findings and recommendations and opinion of the United States Magistrate, filed November 6, 1988, see p. 1a, infra, and granted respondent's motion for summary judgment and ordered the action dismissed. See p. 5a, infra.

On petitioner's appeal, the Ninth

Circuit on March 23, 1989, entered a judgment and an opinion affirming the District Court's order of dismissal. See p. 9a, infra. No petition for rehearing was sought.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

U.S. Const. Amend. XIV, § 1. Equal Protection Clause. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the United States nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Or. Const. Art. I, § 20. Privileges and Immunities Clause.

No law shall be passed granting to

any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

Or. Rev. Stat. § 12.160. Suspension of statute of limitations for persons under disability.

If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 and 12.070 to 12.250 is:

(1) Within the age of 18 years,

(2) Insane, or

(3) Imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life,

the time of such disability shall not be a part of the time limited for the commencement of the action; but the period within which the action shall be brough shall not be extended more than five years by any such disability, nor shall it be extended

in any case longer than one year after such disability ceases.

STATEMENT OF THE CASE

Petitioner is an inmate at Oregon State Penitentiary serving a sentence for a term of his natural life.

Petitioner filed a complaint pro se on April 29, 1987 against respondents, alleging defamation and invasion of privacy, claims arising out of a book written by respondent Rule and published by respondent New American Library. The book was published March 5, 1984.

Defendants moved for summary judgment and alternatively for dismissal on grounds the suit was time-barred. Respondents thereupon moved for, among other relief, dismissal of the lawsuit as untimely filed.

Oregon requires a claim for defamation (libel) to be filed within one year of publication. A claim arising out of

invasion of privacy must be filed within two years of the act.

Oregon statutes extend the statute of limitations for perfecting civil claims to those who are disabled by reason of incarceration. The statute expressly excludes from the tolling benefits inmates serving a term of life .

Counsel for petitioner raised the constitutional issues of denial of equal protection and privileges and immunities in a memorandum and oral argument in opposition to respondent's motions to dismiss and for summary judgment. Petitioner since has focused his attention away from the merits of the case and toward overcoming the time-barred barriers raised by respondent and recognized by the courts below.

The initial findings and recommendation and order, filed by the United States Magistrate of the Distrct Court, dismissed the action as time-barred. It

did not reach the constitutional issues raised by petitioner. The magistrate found that Or. Rev. Stat. § 12.160 (3) did not apply to petitioner. Petitioner was serving a life sentence and did not have a release date set by the State Board of Parole; therefore, he was excluded from the tolling benefits by the plain language of the statute.

On de novo review, and without further opinion, the United States District Court adopted the magistrate's findings and recommendations and ordered the complaint dismissed as untimely filed.

On appeal by petitioner, the Ninth Circuit affirmed, but in a decision based solely on the state and federal constitutional issues. Petitioner had argued that the Equal Protection Clause of the Fourteenth Amendment, and the Privileges and Immunities Clause of the Oregon Constitution, forebade the exclusion from the

benefits of Or. Rev. Stat. § 12.160 (3) of a prisoner serving a life term. Petitioner pointed out that no rational basis existed for distinguishing between inmates serving life and those serving terms of less than life.

The Ninth Circuit instead concluded that the exclusion of those serving life sentences is neither arbitrary nor irrational. The statute has been part of Oregon law since early statehood; it has no apparent legislative history accompanying it. The Ninth Circuit, however, determined that the legislature could reasonably decide that the distinction among inmates serves several state interests.

The Court below enumerated three such state interests: (1) former inmates who are freed of the disability could litigate without the stigma of being an inmate if granted additional time; (2) an inmate had additional time to marshal resources

to bring claims; and (3) the prison system is spared the logistical problems of inmates involved in litigation.

If it were merely conceivable that the legislature could have concluded that the classification of inmates in Or. Rev. Stat. § 12.160 (3) promoted the above state interests, then the classification cannot be arbitrary. So reasoned the Ninth Circuit, which accordingly affirmed the dismissal of the case.

REASONS FOR GRANTING THE WRIT

The Ninth Circuit's decision imputes to the state legislature reasons, which are in themselves arbitrary and irrational, for classifying inmates; the decision raises important and unresolved problems regarding minimum standards the of review of classification schemes in general, and in particular, of a scheme found in a common but rarely construed statute.

Tne ascribed state interests are arbitrary and irrational.

The legislature simply would not have decided that the state had the interests listed by the Ninth Circuit, because they conflict with other of the legisla-

ture's goals and policy, and because it would be the state's interest to break down rather than promote arbitrary classifications.

1. Stigma. The Ninth Circuit assigned as a state interest additional time for an inmate to free himself, presumably by release, of the stigma of being an inmate litigant. First, the additional time granted the inmate serving less than life a maximum of five years additional time to file an action. Yet Oregon law allows for those convicted of certain felonies to be sentenced to 10 and 20 years, Or. Rev. Stat. § 161.605, for inmates to serve a minimum of up to one-half the sentence before parole consideration, Or. Rev. Stat. § 144.110, and for multiple convictions to be served consecutively, Or. Rev. Stat. § 144.783.

The legislature obviously intends to keep certain inmates incarcerated for

terms far beyond the mere five years of tolling to file claims; it must have also contemplated those inmates would necessarily bear the "stigma" of being an inmate while litigating.

Second, a former inmate who litigates his claim on the outside after taking advantage of the tolling statute will still bear the stigma of inmate status. Assuming a given claim will go to trial, the ex-inmate litigant's credibility will always be at issue if he testifies. Under the Oregon Evidence Code, Rule 609 (1), a person's prior felony conviction is admissible for purposes of impeachment. It is admissible regardless of the fact that the fact of a felony conviction substantially outweighs the probative value. State v. King, 307 Or. 332, ____ P.2d ____ (1989). The stigma stays with the inmate long after his release.

Logistics. The Ninth Circuit sug-

gests that the classification scheme serves the state interest in sparing a correctional institution of inmate's litigating from within. But the Oregon legislature has codified common-law legal remedies available to all inmates. Among these are the Post-Conviction Hearing Act, 1959 Or. Laws c. 636, codified at Or. Rev. Stat. § 138.510 et seq. This affords every inmate an opportunity to challenge the validity of his conviction and incarceration without a limit in time within which to file an appropriate petition for relief. The legislature has surely promoted litigation from within and spares not the institution from logisitics.

Indeed, the legislature has authorized the State Department of Corrections to draft rules in accordance with the following stated purpose and policy

> Purpose: To provide inmates with the opportunity to exercise their legal right to access the courts."

> Policy: Every inmate incarcerated in a Department of Corrections facility will be afforded the opportunity to have meaningful access to the courts. Each inmate will have the opportunity to present any issue, including * * * pursuing remedies in connection with civil legal problems * * * *.
>
> Or. Adm. R. 291-139-005 (2) and (3).

Thus, the Ninth Circuit imputes to the legislature a state interest clearly in conflict with express public -- and legislative -- policy.

Marshal resources. Or. Rev. Stat. § 12.160 affords the once-disabled litigant only one year after the termination of the disability to file a timely claim, and in no instance beyond five years of tolling. Rare would be the ex-convict who would be in a position in less than one year of release to support civil litigation. This is simply not a realistic assessment of what the legislature may have intended by the classification scheme; it is not a realistic state interest.

The decision below suggests that

the Oregon legislature would in fact have supported a kind of classification scheme which bucks the national trend to get rid of the distinctions. Legislatures are now either removing the tolling benefits for all inmates, see, e.g., 1987 Utah Laws, c. 19, § 5, codified at Utah Code Ann. § 78-12-36, or granting the tolling benefits to all inmates, see, e.g., 1979 Wis. Laws c. 323, § 28, codified at Wis. Stat. Ann. § 893.16. It is not reasonable to ascribe to the Oregon legislature any intent; it is not even arguable that the legislature would recognize the above as legitimate state interests.

The standard promotes unwarranted speculation as to legislative intent.

Authority for legitimizing a statutory classification scheme so long as the court finds that a legislature "could have rationally concluded that the statute might promote its goals" is found in Minnesota v. Clover Leaf Creamery Co., 449 U.S.

456 (1981). The Ninth Circuit relied on Clover Leaf Creamery in its decision upholding the scheme in Or. Rev. Stat. § 12.160 (3).

That standard promotes speculation for any court, and the Ninth Circuit by necessity did speculate as to what the Oregon legislature might have reasoned when it enacted the statute. Any court would have license to imagine any circumstances that "need be only plausable, arguable, or conceivable." See Jackson Water Works, Inc. v. Public Utilities Comm'n, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987). Under such a low standard, any facially neutral statute that does not discriminate against a suspect class will be accorded legitimacy regardless of the irrationality of the motivation underlying the enactment of the statute.

CONCLUSION

This petition for certiorari should

be granted for the reasons stated above. The Ninth Circuit has lowered to an unreasonable level the standard to review a statutory classification scheme. When no legislative history exists, as with the very old Or. Rev. Stat. § 12.160, the courts should not be able to ascribe just any rationale to a scheme. The standard articulated in Clover Leaf Creamery does give proper deference to a legislature's will. But the speculation allowed by that case should not be license to give credence to legislative rationale where none could have existed. It is possible that a classification scheme never did make sense.

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Certiorari would afford this court an opportunity to clarify a threshold for a rational basis test, at the same time construing a classification long in existence but rarely examined.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff,	)	
v.	)	Civil No. 87-6189-E
ANN RULE, et al., Defendants.	)	ORDER and FINDINGS and RECOMMENDATION

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ATTORNEYS FOR DEFENDANTS

HOGAN, Magistrate:

This is a diversity action for defamation and invasion of privacy.

Defendants move for summary judgment (#10). Plaintiff moves (#14) to continue the motion for summary judgment until further discovery is completed. Defendants' motion should be granted, and plaintiff's motion is denied.

BACKGROUND

In 1982, plaintiff was convicted of murder, attempted murder, and two counts of first degree sodomy. State v. Woodfield, 62 Or.App. 69, 659 P.2d 1006 (1983), rev. denied, 295 Or. 259 (1983). He is now serving a life sentence. Plaintiff was accused of being the "I-5 bandit", "an individual responsible for several serious crimes along that interstate highway." Id., 659 P.2d at 1108. Plaintiff was imprisoned in 1981 on the charges and has remained imprisoned since then.

On March 5, 1984, defendant New American Library published a book entitled The I-5

Killer, written by defendant Ann Rule. Plaintiff alleges that this book defames him.

Plaintiff filed the complaint on April 29, 1987.

DISCUSSION

Defendants make two arguments in support of their motion: (1) the statute of limitations bars this action, and (2) plaintiff is "libel-proof" as a matter of law. Because the statute of limitations issue is dispositive, the court will not decide the libel issue.

The applicable statute of limitations for libel is one year, ORS 12.120(2), which accrues on the date of first publication; and for invasion of privacy is two years. ORS 12.110.

Plaintiff filed the complaint more than thtee years after The I-5 Killer was first published. Plaintiff argues, however, that because he has been continuously imprisoned

since before the book was published, the limitations period was tolled by ORS 12.160(3) which states:

> If, at the time the cause of action accrues, any person entitled to bring an action mentioned in ORS 12.010 to 12.050 and 12.070 to 12.260 is:
> . . .
>
> (3) imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life,
>
> the time of such disability shall not be part of the time limited for the commencement of the action; but the period within which the action shall be brought shall not be extended more than five years by any such disability, nor shall it be extended in any case longer than one year after such disability ceases.

Plaintiff argues that his "life sentence" does not exclude him from the protection of ORS 12.160(3) because he has the possibility of parole. Plaintiff argues that "life no longer means life."

Plaintiff's Supplement, p. 2. The record indicates, however, that plaintiff does not have a parole date. The court cannot speculate about plaintiff's possible release at an unknown date in the future. The record before this court is that plaintiff's life sentence does indeed mean that plaintiff will serve for a "term" of his "natural life." Therefore, ORS 12.160(3) does not apply to this case, and plaintiff's action is barred by the limitations prescribed in ORS 12.110 and 12.120(2), and defendant's motion for summary judgment (#10) should be granted.

The parties do not dispute the facts regarding the statute of limitations issue. The only possible purpose for further discovery would be regarding the merits. The court has not reached the merits because of the untimely filing of the complaint. Therefore, plaintiff's motion to continue the

summary judgment motion pending further discovery(#14) is denied.

Dated this __[6th]__ day of November, 1987.

/s/ Michael R. Hogan

UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff, v. ANN RULE, et al., Defendants.	)	Civil No. 87-6189-E ORDER

PANNER, J.

Magistrate Michael R. Hogan filed his Findings and Recommendation on November 6, 1987. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). When either party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a de novo determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, Inc., 656 F.2d

1309, 113 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982).

Plaintiff has timely filed objections. I have, therefore, given the file of this case a de novo review. I ADOPT the Magistrate's Findings and Recommendation that defendant's motion for summary judgment (#10) should be GRANTED.

IT IS SO ORDERED

DATED this ___[11th]___ day of January, 1988.

/s/ Owen M. Panner
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

RANDALL B. WOODFIELD, Plaintiff, v. ANN RULE, et al., Defendants.	)	Civil No. 87-6189-E JUDGMENT

Based on the record,

IT IS ORDERED AND ADJUDGED this action is dismissed.

DATED: January [13], 1988

ROBERT M. CHRIST, CLERK

By, /s/ Dan Marsh
Dan Marsh, Deputy

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL B. WOODFIELD, Plaintiff-Appellant v. ANN RULE, et al., Defendants-Appellees	No. 88-3623 Civil No.87-6189-OMP JUDGMENT

THIS CAUSE came to be heard on the Transcript of the Record from the United States District Court for the Eugene District of OREGON and was duly submitted.

ON CONSIDERATION WHEREOF, It is not here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

Filed and entered 3/23/89

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL B. WOODFIELD, Plaintiff-Appellant, -vs-. ANN RULE, aka "Andy Stack"; NEW AMERICAN LIBRARY, INC., Defendants-Appellees	CA No. 88-3623 DC No.CV 87-6189-OMP M E M O R A N D U M

Appeal from the United States District Court
for the District of Oregon
Honorable Owen M. Panner, District Judge,
Presiding
Argued and Submitted March 10, 1989
Portland, Oregon

BEFORE: CANBY, THOMPSON AND LEAVY, CIRCUIT JUDGES

Woodfield appeals the summary judgment holding that his action is barred by the statute of limitations. We affirm.

Woodfield filed suit against Rule, the author of The I-5 Killer, and the publisher,

New American Library, for defamation and invasion of privacy. Woodfield filed his action on April 29, 1987, more than three years after first publication of the work. The Oregon statute of limitations for libel is one year, Or. Rev. Stat §12.120(2) (Supp. 1987), and the applicable limitation for invasion of privacy is two years. Id. at §12.110. Wood field argued that Oregon's tolling statute, Or. Rev. Stat. § 12.160, extended the time in which he had to file his claims. The district court granted the defendants' motion for summary judgment, holding that the tolling statute did not apply, and the statute of limitations thus barred his claims.

Woodfield argues that Oregon's tolling statute violates the equal protection clause of the United States Constitution, Art. I. § 20. The statute provides a tilling period of the statute of limitations for persons serving

prison sentences for terms "less than the person's natural life." Or. Rev. Stat. § 12.160(3). Woodfield , who is presently serving a life sentence of imprisonment, argues that the exclusion of "lifers" from the benefits of the tolling statute violates the equal protection clause.

The tolling statute does not create or deny a prisoner's right to commence legal action, it merely extends the time in which to file, so a fundamental right of access to the courts is not involved. Harris v. Craig, 299 Or. 12, 697 P.2d 189, 190 (1985). In addition, Woodfield is not a member of a protected class. As a result, the statute must be analyzed under a rational basis standard. Vance v. Bradley, 440 U.S. 93, 96-97 (1979). Under this standard, the statute must be upheld unless it bears no reasonable relationship to the furtherance of a legitimate state interest and is irrational.

Vance, 440 U.S. at 97; United States v. Alexander, 673 F.2d 287, 288 (9th Cir.), cert. denied, 459 U.S.876 (1982). The same standard applies to Woodfield's arguments under the Oregon Constitution. City of Klamath Falls v. Winters, 289 Or. 757, 619 P.2d 217, 224 n.10 (1980). The classification need only be plausible, arguable, or conceivable. Jackson Water Works, Inc. v. Public Utilities Comm'n, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987). If the legislature could rationally have concluded that the statute might promote its goals, the classification is reasonable and constitutional. Minnesota v. Clover Leaf Creamery Co.,449 U.s. 456 (1981).

The legislature could reasonably decide that a tolling statute providing additional time for persons imprisoned for a period of years, as opposed to those serving a life sentence, serves several state interests.

Statutes of limitation and tolling statutes represent a public policy about the privilege to litigate and are subject to a relatively large degree of legislative control. Chase Sec. Corp. v. Donaldson, 325 U.S. 304, 314 (1945). Imprisonment is treated as a temporary disability in the statute, as are infancy and insanity. See Or. Rev. Stat. § 12.160. Those serving a fixed term are granted additional time, and may be able to pursue their claims without the stigma of being an inmate, and perhaps after being able to marshal resources to bring their claims. The state also has an interest in allowing an inmate to wait until after release to initiate litigation in that it spares the prison system the logistical problems of prisoners conducting litigation from within. It is rational to exclude persons serving life sentences from the benefits of the tolling

statute because these interests will not be served.

We cannot say the exclusion of persons serving life sentences from the benefits of the tolling statute is arbitrary or irrational. The classification bears a rational relationship to state interests, and must be upheld.

AFFIRMED. (Footnote: In light of our disposition, we need not reach defendant's contention that Woodfield is "libel-proof.")

Supreme Court, U.S.
FILED
AUG 14 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

RANDALL B. WOODFIELD,

Petitioner,

—v.—

ANN RULE (a/k/a "ANDY STACK"), and
NEW AMERICAN LIBRARY, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Counterstatement of Question Presented:

Whether petitioner, an inmate sentenced to life imprisonment plus 125 years for Murder, Attempted Murder, and two counts of First Degree Sodomy, who is not a member of a suspect class and is entitled to the same Oregon statute of limitations for libel and invasion of privacy as every other unincarcerated citizen of Oregon, but does not get the benefit of Oregon's law that tolls the statute of limitations for inmates who are serving a sentence for a term of less than life, has failed to show that this legislative classification is irrational and bears no reasonable relationship to the furtherance of a legitimate state purpose so as to violate the Equal Protection Clause of the Fourteenth Amendment to the United States

Constitution and the equivalent provision in Article 1, § 20 of the Oregon Constitution?

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RULE 28.1 LIST

New American Library, Inc. ("NAL") is now, by change of corporate structure, an unincorporated division of Penguin Books USA Inc.

The parent company of Penguin Books USA Inc. is Pearson Inc.

All subsidiaries of Penguin Books USA Inc. are wholly owned.

Counterstatement of the Case

In 1982, petitioner Randall B. Woodfield ("Woodfield") was convicted of Murder, Attempted Murder, and two counts of First Degree Sodomy. See State v. Woodfield, 62 Or. App. 69, 659 P.2d 1006 (1983), rev. den., 295 Or. 259. Appendix ("A.") 2a. These convictions were for "several serious crimes along the interstate highway." Id. at 71, 659 P.2d at 1008. A. 2a. As a result, Woodfield gained notoriety (as well as judicial recognition) "as being the 'I-5' Bandit." Ibid. A. 2a. Woodfield was sentenced to life imprisonment plus 125 years. Woodfield's application for parole was denied by the Oregon Board of Parole on December 18, 1985. There will be no reconsideration of this decision. ORS 144.120(4); OAR 255-35-030.

Woodfield will be in prison for the rest of his life.

On March 5, 1984, respondent New American Library, Inc. ("NAL") published a book written by respondent Ann Rule ("Rule"), titled The I-5 Killer (the "Book"). A. 2a. On April 29, 1987, more than three years after the publication of the Book, Woodfield filed a libel and invasion of privacy suit in the United States District Court for the District of Oregon. A. 1a. Oregon requires that a libel claim be filed within one year of the offending publication. ORS 12.120(2). A claim arising out of invasion of privacy must be filed within two years of the act. ORS 12.110.

The "Order and Findings and Recommendation," filed by the United States Magistrate for the District Court, recommended that the "defendants' motion

for summary judgment should be granted." A. 2a. Since petitioner was serving a life sentence, that is, a term for his natural life, the Magistrate found that the plain language of Oregon's tolling statute, ORS 12.160(3)[1] did not apply to petitioner.[2] Petitioner unsuccessfully argued that it did apply. Therefore, the Magistrate recommended that petitioner's complaint be dismissed

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1 ORS 12.160(3) provides, in relevant part, that any person "imprisoned on a criminal charge, or in execution under the sentence of a court for a term less than the person's natural life is entitled to a tolling of the statute of limitations for up to five years."

2 The basic practice of the Supreme Court is to defer to the lower court's construction of a state statute. William L. Webster, Attorney General of Missouri, et al v. Reproductive Health Services, et al, 57 U.S.L.W. 5023, 5029 (U.S. July 3, 1989).

"because of the untimely filing of the complaint." A. 4-5a.

After de novo review, the United States District Court for the District of Oregon adopted the Magistrate's order and "Findings and Recommendation" that "defendants' motion for summary judgment should be granted." Thus it was ordered on January 11, 1988 that the complaint be dismissed as untimely filed. A. 6a.

Woodfield appealed the summary judgment, dismissing his action as barred by the statute of limitations, to the United States Court of Appeals for the Ninth Circuit. A. 9a. The Ninth Circuit affirmed. A. 12a. The Court's unanimous decision was based on state and federal constitutional issues.

The Ninth Circuit concluded that the tolling statute's exclusion of those serving life sentences was neither

arbitrary nor irrational. A. 12a. The Ninth Circuit determined that the Oregon legislature could have reasonably determined that the distinction among inmates served several state interests. A. 11a. The Ninth Circuit, accordingly, affirmed the dismissal of petitioner's complaint. A. 12a*. No petition for rehearing was sought.

On July 20, 1989, petitioner filed a petition in this Court for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

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* In light of its ruling, the Ninth Circuit did "not reach defendant's contention that Woodfield is 'libel proof'". A 16a.

Reasons For Refusal of the Writ

The Ninth Circuit Properly Affirmed the Dismissal of the Case

A. THE PROVISION OF OREGON LAW TOLLING THE STATUTE OF LIMITATIONS APPLICABLE TO SOME PRISONERS, BUT NOT THOSE SERVING LIFE SENTENCES, WHO HAVE THE SAME STATUTE OF LIMITATIONS AS ALL OTHER UNINCARCERATED CITIZENS OF OREGON, DOES NOT VIOLATE PETITIONER'S CONSTITUTIONAL RIGHTS.

Petitioner claims that his exclusion from enjoying the limited benefit extended to non-lifers under the Oregon tolling statute ORS 12.160(3) -- which leaves him with the same statute of limitations for libel and invasion of privacy as all other unincarcerated citizens of the State of Oregon -- violates his right to equal protection under the United States and Oregon Constitutions. His claim, as

demonstrated below, is completely meritless.

Petitioner does not argue, nor can he, that he is a member of a suspect class. Nor does the challenged provision affect a fundamental right. As the Ninth Circuit determined: "The tolling statute does not create or deny a prisoner's right to commence legal action, it merely extends the time in which to file, so a fundamental right of access to the courts is not involved. Harris v. Craig, 299 Or. 12, 697 P.2d 189, 190 (1985)." A. 13a.

Thus, the constitutionality of the limited exception included in the tolling statute must be analyzed under the classic rational relationship test. Vance v. Bradley, 440 U.S. 93, 96-97 (1979). Under this analysis, the challenged legislation is upheld unless

it bears no reasonable relationship to the furtherance of a legitimate state purpose and is irrational. Id. at 97; United States v. Alexander, 673 F.2d 287, 288 (9th Cir. 1982), cert. denied, 459 U.S. 876 (1982). United States v. Holmes, 838 F.2d 1175, 1178 (11th Cir. 1988) cert. denied, 108 S. Ct. 2829 (1988); United States v. Holland, 810 F.2d 1215, 1218 (D.C. Cir. 1987), cert. denied, 481 U.S. 1057 (1987). And the classification need only be plausible, arguable, or conceivable. Jackson Waterworks, Inc. v. Public Utilities Commission, 793 F.2d 1090, 1094 (9th Cir. 1986), cert. denied, 479 U.S. 1102 (1987).

To prevail in his attack on ORS 12.160(3), petitioner must make a clear showing of arbitrariness. Hodel v. Indiana, 452 U.S. 314, 331 (1981). If the reasonableness of the classification

is even debatable, the court must defer to the legislature and uphold the statute because the legislature possesses superior fact finding ability and has sufficiently considered the appropriateness of the classification. Vance v. Bradley, 440 U.S. 93 (1979). Furthermore, it is not up to the courts to decide whether the statute will actually achieve its asserted goals. If the legislature could rationally have concluded that the statute might promote its goals, then the classification is reasonable and constitutional. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456 (1981).

What is more, state legislatures have been accorded extreme deference with respect to statutes of limitations. In Chase Securities Corporation v. Donaldson, 325 U.S. 304, 314 (1945), the

Supreme Court recognized that it is not the province of the courts to scrutinize the logic or fairness of statutes of limitations, and explained why:

> Statutes of limitations find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. . . . They are by definition arbitrary, and their operation does not discriminate between the just and unjust claim, or the voidable and unavoidable delay. They have come into the law not through the judicial process but through legislation. They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual. He may, of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively

large degree of legislative control.

Thus courts do not invalidate statute of limitations provisions simply because they apply different rules to different sets of individuals. Pottratz v. Davis, 588 F. Supp. 949 (D. Md. 1984) (rejecting challenge to distinction made by Oregon legislature between claims for asbestos related injuries and claims for Dalkon Shield related injuries); Wayne v. Tennessee Valley Authority, 730 F.2d 392 (5th Cir. 1984) cert. denied, 469 U.S. 1159 (1985); see also Hargett v. Limberg, 598 F. Supp. 152 (C. D. Utah 1984), rev'd on other grounds, 801 F.2d 368 (10th Cir. 1986) (rejecting challenge to tolling provision for medical malpractice claims which excluded minors and incompetents).

The Ninth Circuit found that the legislature could have reasonably

concluded that the Oregon tolling statute, which provides additional time for persons imprisoned for a period of years, as opposed to lifers such as petitioner, serves several state interests -- not just one. A. 14-15a. The Court articulated three state interests: (1) granting additional time for inmates to marshall resources to bring claims; (2) sparing the prison system the logistical problems of inmates involved in litigation; and (3) removing the stigma of being an inmate if granted additional time. Id.

All of these state interests are rational and, indeed, reasonable. And the Oregon tolling statute, which is an act of legislative grace, is amply supported by any one of these three substantial state interests.

Thus, for example, it is logical to extend the tolling provision to non-lifers so as to enable them, upon their release, to gather resources to bring their claims. It is, however, illogical to extend this benefit to "lifers" who will never be released.

As a corollary, the classification scheme serves the state's interest in sparing a correctional institution the substantial adminstrative burden of maintaining the safety and security of the institution while tending to additional inmates' litigation from within. Litigation does, of course, occur from within Oregon prisons, as petitioner discusses. But the tolling statute functions to prevent certain additional litigation (e.g., libel and invasion of privacy claims), which does not involve the underlying conviction or

prison conditions, from being conducted with difficulty and danger from prison. This furthers administrative convenience and removes the strains brought upon the already heavily burdened prison administration by active jail-house lawyers. Hence, the prison administration is spared the security and other logistical problems that would attend additional, non-prison related litigation conducted from inside a prison.

Finally, those serving a fixed term are granted additional time so that at least some will be able to pursue their claims without the stigma of being inmates. Even if an ex-inmate's former status is admitted into evidence, as petitioner argues based on State v. King, 307 Or. 332 (1989), a former inmate (or his attorney) could -- but a "lifer" such as petitioner could not -- argue

forcefully that he had paid his debt to society, having served his requisite prison sentence. Such an argument would go far to blunt any stigma.

None of these considerations, however, apply to an inmate, such as petitioner, serving a life sentence. His situation is not going to change. Excluding "lifers" from an extension of the statute of limitations, therefore, is perfectly rational. The fact that this exclusion works to the detriment of a given prisoner does not make it unconstitutional. Indeed, the legislature could have decided as a matter of policy that persons convicted of crimes so grave as to warrant life sentences should not be granted a benefit, such as an extension of statute of limitations. This is particularly so here, where "lifers," such as petitioner,

are subject to the same statute of limitations as all other unincarcerated citizens of Oregon.

Petitioner has made no showing, nor could he, that Oregon's distinction between "lifers" and those serving lesser sentences is irrational. Rather, he argues that this distinction is inconsistent with the "trend" in other states. However, as this Court has held, the constitutionality of the measure does not depend on a Court's assessment of its wisdom, or of its empirical success or failure. It is sufficient if the legislature "could rationally have decided" that the means chosen will promote the legislative objectives. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 466 (1981).

Furthermore, petitioner does not cite a single case in support of his

claim that Oregon's tolling statute is unconstitutional. Where there is evidence before a legistature reasonably supporting a classification attacked as without a rational basis, litigants may not procure invalidation under the equal protection clause merely be tendering evidence in court that the legislature was mistaken. Id. Petitioner however, does not provide any evidence to support the notion that marshalling resources is not a legitimate state interest. He merely states that it is unrealistic. Similarly, petitioner argues that the logistical advantages of former inmates litigating outside of prison is in conflict with express legislative policy. Petitioner bases this argument on the fact that inmates can litigate from within, as authorized by the State Department of Corrections. This policy

does not contradict the rational basis behind allowing certain inmates to wait until after release to initiate litigation not related to their conviction nor to the conditions of their confinement. Rather, the prison administration is spared the considerable administrative difficulties of certain additional litigation from within the prison that, but for the tolling statute, would have to be commenced while the inmate was still behind bars.

In sum, petitioner is afforded the same benefits under the statute of limitations as any other Oregon citizen. Petitioner is no worse off than any other unincarcerated citizen of Oregon to whom the statute of limitations equally applies.

The logical, and dangerous, extension of petitioner's argument is

that any citizen of Oregon who failed to exercise his or her rights within the requisite statute of limitations period, but did so within the tolling period, yet did not receive the benefit of it, would have a constitutional right to be included in the statutory scheme. This is simply absurd. And petitioner's claim is far worse. Indeed, it is meritless.

Petitioner has failed to show that the denial of the benefit of the Oregon tolling statute violates his constitutional rights.

CONCLUSION

For the foregoing reasons, it is submitted that the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

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